

To: Dravis, Samantha[dravis.samantha@epa.gov]
From: POLITICO Pro Energy
Sent: Fri 2/23/2018 10:52:22 AM
Subject: Morning Energy: A packed CPAC for energy — Judge calls delay of methane rule 'untethered by evidence' — Watchdog flags Zinke-NRA meeting

By Kelsey Tamborrino | 02/23/2018 05:50 AM EDT

With help from Alex Guillén, Emily Holden and Anthony Adragna

A CPAC-KED HOUSE: All three energy principals will head to the National Harbor today to address a crowd of GOP officials and supporters at the Conservative Political Action Conference. While ME isn't expecting much in the way of policy specifics to be discussed, the conference will be a chance for the three to rally the faithful and tout their accomplishments over the past year.

Interior Secretary Ryan Zinke and Energy Secretary Rick Perry will deliver remarks during a morning session with former Colorado Rep. Bob Beauprez. Zinke will discuss "the incredible success" the administration has made on President Donald Trump's "energy dominance" goals, including increasing federal energy revenues to states by more than a billion dollars and the tax reform bill's opening of the "1002" area of Alaska's National Wildlife Refuge, according to Interior spokeswoman Heather Swift.

Granted a primetime spot on the agenda, EPA Administrator Scott Pruitt will address the confab's Ronald Reagan dinner and dessert reception alongside Fox News' Judge Jeanine Pirro. Pruitt is no stranger to the event, having appeared last year just days after he was confirmed to EPA. Warmly embraced by the conference, Pruitt vowed last year that he would repeal various Obama administration rules like the Clean Power Plan and Waters of the U.S. During his address tonight, the administrator plans to highlight the work done at his agency "to ensure regulatory certainty for hardworking Americans," EPA spokeswoman Liz Bowman said. "In one year, Administrator Pruitt spearheaded 22 de-regulatory actions that saved the American people more than \$1 billion in regulatory costs," she added.

If you go: Zinke and Perry's session begins at 8:35 a.m. and Pruitt's at 7 p.m. at the Gaylord National Resort and Convention Center. See the full CPAC schedule [here](#) and watch the livestream [here](#).

INTERIOR DELAY OF METHANE RULE 'UNTETHERED TO EVIDENCE,' JUDGE SAYS: A federal judge late last night blocked the Interior Department's delay of key requirements under the methane waste rule, reinstating at least for now a rule the Trump administration is in the midst of repealing. In a fiery order, Judge William Orrick of the U.S. District Court for Northern California said that Interior's delay is "untethered to evidence" that would support postponing the original methane regulation. He also said the challengers — California, New Mexico and environmental groups — have shown "irreparable injury caused by the waste of publicly owned natural gas, increased air pollution and associated health impacts, and exacerbated climate impacts," and are likely to win the entire case.

In a 29-page injunction, Orrick, an Obama appointee, rejects the Trump administration's arguments for delaying the rule. Interior "fails to point to any factual support underlying" its new concerns, Orrick wrote. He also slammed key parts of Interior's regulatory analysis, especially what he said was an attempt to inflate the delay's climate benefits when they are likely negative. Plus, he added, Interior violated notice-and-comment requirements because "Secretary Zinke refused to consider comments regarding the substance or merits of the" original methane waste rule.

Sound familiar? This is the second time the oil and gas industry has faced whiplash regulatory confusion amidst the Trump administration's efforts to halt Obama-era environmental regulations as quickly as possible. EPA last summer stayed its own methane rule covering new oil and gas wells, but after a weeks-long tug of war with the D.C. Circuit, the rule was reinstated. EPA is now considering phasing in certain requirements rather than outright staying the rule.

HAPPY FRIDAY! I'm your host Kelsey Tamborrino, and Bracewell's Frank Maisano was first to identify Calvin Coolidge as holding the title for shortest presidential memoir. "The Autobiography of Calvin Coolidge" clocks in at 247 pages. For today: Franklin Roosevelt was the first president to name a woman to his Cabinet. Who was the woman and what was the Cabinet position? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

HEADS UP! Zinke will also meet with governors from Nevada, New Mexico, North Dakota and Alaska today, according to Interior.

WATCHDOG FLAGS ZINKE-NRA MEETING: A government watchdog group is waving red flags over Zinke's previous appearance at a Virgin Islands fundraiser, as well as a new speaking engagement backed by the National Rifle Association. The Campaign Legal Center — which boasts former Office of Government Ethics head Walter Shaub Jr. as a senior director — is calling on the FEC to investigate the Virgin Islands appearance, and it plans to request that Interior's inspector general probe what it contends is a "pattern of violations" of ethics regulations, Pro's Ben Lefevre reports. "In his short time in office, Secretary Zinke's boundary-pushing — and, apparently, boundary-crossing — conduct has set a poor ethical example for the department's staff," the Campaign Legal Center wrote in a draft complaint it plans to send to the inspector general Monday.

The complaints from CLC also flagged a previously unreported trip from September when Zinke and two Interior staffers stayed two nights at the Four Seasons Resort in Dallas while the secretary spoke at an conference organized by the NRA. The group previously donated \$4,000 to Zinke's 2016 congressional campaign. According to travel documents, an Interior ethics officer signed off on Zinke and the staffers' spending of \$195 per room per night. During the trip, Zinke spent an hour at an "informal" luncheon with oil industry executives and financial industry members who had contributed heavily to President Donald Trump's presidential campaign, Ben writes. "The lunch, which Interior's [trip schedules](#) show was held to discuss 'sports and conservation,' included Thomas Hicks, a Texas oilman who contributed \$1,500 to Zinke's congressional races and at least \$8,100 to Trump's presidential campaign, according to FEC data." Read [more](#).

REPORTS: TRUMP SCHEDULES BIOFUELS MEETINGS: The president has called two summits with Cabinet members and senators on potential changes to biofuels policy, Bloomberg and Reuters reported last night, citing sources familiar with the matter. The first meeting is set for today with Pruitt and Agriculture Secretary Sonny Perdue, Bloomberg [reports](#). Another meeting is scheduled for Tuesday and will include senators who have been locking horns over the issue.

Reuters reported the Tuesday meeting will include [Ted Cruz](#), [Chuck Grassley](#) and [Joni Ernst](#), along with Pruitt, Perdue, and potentially Perry. One source said the meeting would "focus on short-term solutions to help" the Philadelphia Energy Solutions refinery, whose owners recently put the company in Chapter 11 bankruptcy, placing the blame on the Renewable Fuel Standard. Another source told Reuters, the "meeting will consider whether to cap prices for biofuel credits, let higher-ethanol blends be sold all year, and efforts to get speculators out of the market."

EPA NOT SWEATING FLYNN'S RETIREMENT: There's no need to worry about who will take over the deputy EPA administrator job in a couple of months, when the career official retires, an agency spokeswoman told ME. EPA "fully expect[s]" the president's nominee for the job, Andrew Wheeler, to be confirmed before acting deputy Mike Flynn retires on April 3, the spokeswoman said. If Wheeler is not confirmed at that time, it is unclear whether another career official or a political appointee would land temporarily in the post, which oversees day-to-day operations. Though Wheeler appears to have the votes for confirmation, Democrats unhappy with his lobbying history and climate policies likely will force the Senate to spend the maximum time debating his nomination. The Senate is slated to focus mostly on judicial nominations next week.

— **"Mike Flynn is a dedicated and hard-working public servant,"** EPA spokeswoman Liz Bowman said of the 38-year agency veteran. "Anyone who was lucky enough to work with him appreciates his work and his friendship, and we all wish him the best in his retirement."

EPA HEARING DRAWS THREE SPEAKERS: EPA will hold a public hearing today on its proposal to reject a request from Connecticut to require more pollution controls at a coal plant in Pennsylvania — but it might not last very long. The [speaker list](#) for the hearing at EPA's D.C. headquarters has only three people on it — one from the American Lung Association and one apiece from the states of Connecticut and Maryland. (The schedule even includes a one-hour lunch break.) Speakers are typically limited to five minutes at these events, at which EPA officials mostly listen. Asked whether EPA would give anyone a little extra time with so many empty seats in the room, a spokesman referred ME to the [original announcement](#)'s rules and the five-minute limit. It's technically not too late to go, since so many slots appear open; the event begins at 9 a.m. at EPA's headquarters and goes until 6 p.m. or until two hours after the last registered speaker.

ONE FOR THE RECORD: [In a lawsuit](#) filed Thursday, two groups alleged EPA is violating federal records laws by avoiding creating and maintaining documents about agency activities. Citizens for Responsibility and Ethics in Washington and Public Employees for Environmental Responsibility cite news reports in their lawsuit that say Pruitt and his political appointees have

told EPA staff not to keep written records, including in rewriting regulations. Those records should be maintained under the Federal Records Act, the groups say, and made available within a month by request under the Freedom of Information Act. Pro's Emily Holden reports [here](#).

MURKOWSKI WARNS OF 'FRAGILE' ENERGY GAINS: Even as she took a victory lap before the Alaskan state legislature Thursday for opening ANWR and progress toward building the King Cove road, Senate Energy Chairwoman [Lisa Murkowski](#) urged state lawmakers against complacency in protecting those hard-fought wins. "These gains are substantial — and in many ways they're historic — but ... in many ways they're still fragile," she said. "As much now as we've ever done, we need to be speaking with one voice at the national level." She said there would likely be substantial litigation over ANWR and King Cove, urging lawmakers to take the lawsuits "seriously."

The outlook for King Cove, you ask? "I can't wait to be there to turn the first shovel of dirt on this. We are closer than ever to finally seeing a life-saving road," Murkowski said.

Next steps in the five-year drilling plan: Murkowski pronounced herself "pleased" with Zinke's proposed moves to expand the number of areas potentially open for oil and gas drilling, especially Arctic waters. "Just because Shell is not there right now does not mean there are not opportunities," she said.

FOR YOUR RADAR: Murkowski today hosts Forest Chief Tony Toole in Ketchikan, where she promised to bring up the 2001 roadless rule that limits road construction through national forests for timber harvesting or mining purposes. That rule she said, has limited forestry, mining and renewable energy projects, and she plans to push for "balanced management" in national forests.

GETTING POWER STORAGE'S FULL POTENTIAL: Researchers from the Brattle Group released a study Thursday examining FERC's recent [Order 841](#) that aims to make it easier to add electricity storage to the grid. If states build on the Order 841, the study found, storage market potential could increase to 50,000 MW over the next 10 years, as long as storage costs continue to drop. Read the study [here](#).

THE CLIMATE CONSEQUENCE: Banning new and renewed leases for fossil fuel production on U.S. public lands could cut greenhouse gas emissions by 280 million tons annually by 2030, on par with major Obama administration policies, according to a new [study](#) in Climatic Change. Restricting leases would lead to slightly higher prices and stimulate production elsewhere, the study by the Stockholm Environment Institute found.

THE ID OF ISDS: Ahead of upcoming meetings to discuss NAFTA's investment chapter, Pro's Adam Behsudi reports, there is growing sentiment among countries involved in the talks that the investor-state dispute settlement — which allows companies to recover hundreds of millions of dollars in damages — could be dropped from the revised trade pact. According to an official report seen by POLITICO, Canada presented a "conceptual proposal of possible landing zones," which included eliminating the ISDS, during the latest round of talks in Montreal.

Green groups have previously called out the ISDS as an under-the-radar opening where fossil fuel companies might try to press for increased access for drilling. Meanwhile, business groups like the U.S. Chamber of Commerce and the National Association of Manufacturers have [called on](#) the administration to preserve the controversial provision. The American Petroleum Institute released a statement this week stressing the importance of ISDS for U.S. access to Mexico's newly opened oil and natural gas market. Read the story [here](#).

FOIA WHAT IT'S WORTH: American Oversight, the Asbestos Disease Awareness Organization and the Environmental Working Group have filed a FOIA request for communication between EPA officials and representatives from the American Chemistry Council and the Chlorine Institute, as well as companies including Occidental Chemical, Olin and Chemours. The request comes ahead of a decision on restrictions expected to be related to asbestos under the Toxic Substances Control Act. Read the FOIA [here](#).

STRANDED ON URBAN HEAT ISLAND: A new paper published Thursday from the Massachusetts Institute of Technology focuses on the connection between a city's layout and the phenomenon known as an urban heat island. The research, published in the journal Physical Review Letters, found cities laid out on a precise grid had a far greater buildup of heat compared to their surroundings than those more chaotically arranged. Read [more](#).

MAIL CALL! WHITEHOUSE PRESSES ON MSHA ACTION: Sen. [Sheldon Whitehouse](#) pressed the head of the Mine Safety and Health Administration on whether he plans to move forward on items in Bob Murray's "[action plan](#)" to the administration. Murray's action plan includes three proposals for MSHA, Whitehouse says in a Thursday letter to David Zatezalo. Specifically, Whitehouse asks Zatezalo whether he will act on Murray's request to roll back MSHA's coal dust and pattern of violation rules. Read the letter [here](#).

IN THE SNOW: A report out today from Protect Our Winters links years of low snow cover to fewer jobs in U.S. ski towns. In those years, "reduced participation decreased value added by over \$1 billion and cost 17,400 jobs compared to an average season," according to the report. Read it [here](#).

CLICK IT: New Mexico Sen. [Martin Heinrich](#) launched a "Solar Toolkit" on Thursday. "The toolkit highlights success stories from around the state, and provides reflections from the New Mexicans who have gotten the job done," Heinrich said in a statement. See it [here](#).

QUICK HITS

- Study: New surge in civil lawsuits tied to Deepwater Horizon spill, [The Hill](#).
- From the rubble, utilities ready for the next disaster, [S&P Global](#).
- Unraveling the 'weaponization' of the EPA is top priority for Pruitt, [CBN News](#).
- Former Trump aide calls Paris climate accord 'a good Republican agreement,' [The New York Times](#).

— Spectacular fossils found at Bears Ears — right where Trump removed protections, [The Washington Post](#).

HAPPENING TODAY

9:00 a.m. — POLITICO's State Solutions [conference](#), focusing on innovative approaches that governors have taken to address complex problems, 901 K St. NW

9:00 a.m. — EPA [public hearing](#) on Connecticut ozone petition, 1200 Pennsylvania Ave.

12:00 p.m. — The Women of Renewable Industries and Sustainable Energy [lunch and learn](#) with Julia Hamm, of the Smart Electric Power Alliance, 1220 19th St. NW

12:00 p.m. — The Federalist Society's Regulatory Transparency Project [discussion](#) on whether it is "Time to Reform the Jones Act?" 214 Massachusetts Ave. NE

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/02/a-packed-cpac-for-energy-113414>

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Watchdog seeks probe into Zinke gun-club outing [Back](#)

By Ben Lefebvre | 02/22/2018 07:30 PM EDT

A government watchdog group asked the Federal Election Commission on Thursday to investigate Interior Secretary Ryan Zinke's appearance at Virgin Islands Fundraiser, and it plans to request that Interior's Inspector General probe what it contends is his "pattern of violations" of ethics regulations.

The complaint letters from the Campaign Legal Center, which [cite several](#) POLITICO [investigations](#) as evidence, increase the scrutiny the former Montana congressman has faced over his habit of mixing official travel and political events in the Virgin Islands and the mainland. The Interior inspector general's office is already [conducting](#) a review of Zinke's travel and campaign finance practices, which it expects to release by April.

"In his short time in office, Secretary Zinke's boundary-pushing — and, apparently, boundary-crossing — conduct has set a poor ethical example for the department's staff," the Campaign Legal Center wrote in a draft complaint it plans to send to the inspector general Monday. "He appears to have violated ethics-related laws and regulations on several occasions and wasted taxpayer funds on frivolities. As a cabinet-level official, he owes more to the public he serves."

The center is a nonpartisan, nonprofit group that monitors lawmakers ethics. Its senior director, Walter Shaub Jr., was director of the U.S. Office of Government Ethics before stepping down after Donald Trump became president.

The Campaign Legal Center's complaints also flagged a previously unreported trip in September when Zinke and two Interior staff members stayed two nights at the Four Seasons Resort in Dallas while he spoke at a conference organized by the National Rifle Association, which had donated \$4,000 to his 2016 congressional campaign. An Interior ethics officer signed off on Zinke and the staffers spending \$195 per room per night, according to travel documents.

During the trip, Zinke spent an hour at an "informal" luncheon with several oil industry executives and financial industry members who had contributed heavily to Trump's presidential campaign. The lunch, which [Interior's trip schedules](#) show was held to discuss "sports and conservation," included Thomas Hicks, a Texas oilman who contributed \$1,500 to Zinke's congressional races and at least \$8,100 to Trump's presidential campaign, according to FEC data.

An Interior Department spokeswoman did not comment on the complaint.

Another luncheon guest was Gentry Beach, a Dallas-based hedge fund manager who helped [raise millions](#) of dollars for Trump's campaign. Beach and Hicks' son, Thomas Hicks Jr., also helped [plan](#) a controversial Inauguration Day event where groups would have paid up to \$1 million to meet Trump. The event was canceled after local news reported on it.

After the luncheon, Zinke spent several hours at the Dallas Gun Club [shooting range](#) with NRA members. The private club charges a \$7,000 application fee plus a \$100 monthly membership dues. Zinke released several tweets at the event, [writing](#): "Firearm & ammo sales add billions to conservation!"

The Campaign Legal Center in a separate letter it filed Thursday with the FEC asks for an investigation into a March fundraiser in the Virgin Islands that charged up to \$5,000 for couples to take photos with Zinke. The [fundraiser](#), first reported by POLITICO, has drawn scrutiny as neither of the event's ostensible beneficiaries — a federal PAC known as the Virgin Islands Republican Party and the territorial party committee — has filed disclosure forms showing how much money it raised.

The VIGOP PAC has ties to a group of D.C.-area consultants and fundraisers, including Kimberly Bellissimo, head of direct mail company ForthRight Strategies and a [board member](#) at the American Conservative Union, which organizes the annual CPAC conference. Zinke, who established political fundraising organizations that [funneled](#) millions of dollars from small donors to Bellissimo-run businesses, is scheduled to appear on stage at the CPAC conference Friday.

Virgin Islands GOP Chairman John Canegata told POLITICO in December that he planned to file paperwork documenting the fundraiser with territorial regulators.

Canegata did not reply to repeated attempts to reach him. But the Campaign Legal Center notes

in its complaint that Virgin Island Elections Systems Supervisor Caroline Fawkes told the group Canegata has never filed such a finance report, either for the Zinke fundraiser or otherwise.

"The public remains entirely in the dark about which donors paid thousands of dollars to buy access to Secretary Zinke," the Campaign Legal Center wrote in its complaint.

The VIGOP PAC reimbursed Interior for Zinke's attendance at the March event, with the payment coming days after his appearance there was first reported. The payment settled concerns that his attending the fundraiser may have violated the Hatch Act barring executive branch officials from using taxpayer funds to advance partisan causes.

To view online [click here](#).

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Lawsuit claims EPA does not keep proper records [Back](#)

By Emily Holden | 02/22/2018 05:47 PM EDT

Two groups today sued EPA for allegedly violating federal records laws by avoiding creating and maintaining documents about agency activities.

Citizens for Responsibility and Ethics in Washington and Public Employees for Environmental Responsibility filed a lawsuit in federal court claiming that EPA policies do not comply with record-keeping requirements. The groups cite news reports that Administrator Scott Pruitt and his political appointees have told EPA staff not to keep written records, including in rewriting regulations.

Those records should be maintained under the Federal Records Act and made available within a month by request under the Freedom of Information Act.

CREW has submitted 16 FOIA requests, "virtually all of which remain outstanding," according to the complaint. PEER has four lawsuits pending against EPA for failing to produce records. EPA faces another lawsuit, from the Sierra Club, about its FOIA practices. The agency has been sued dozens of times over unanswered or rejected FOIA requests.

The suit also targets Archivist of the U.S. David Ferriero and the National Archives and Records Administration, which the groups argues are failing to enforce the law.

An EPA spokesperson said the agency doesn't comment on pending litigation.

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3 business groups' support for NAFTA 2.0 could hinge on ISDS [Back](#)

By Megan Cassella | 08/24/2017 12:27 PM EDT

Three top business organizations are urging the Trump administration to preserve the controversial investor-state dispute settlement provision in NAFTA 2.0, warning that their support for the renegotiation will wane if the mechanism is weakened or eliminated.

"Attempts to eliminate or weaken ISDS will harm American businesses and workers and, as a consequence, will serve to undermine business community support for the NAFTA modernization negotiations," the heads of the Business Roundtable, National Association of Manufacturers and U.S. Chamber of Commerce wrote in a letter to U.S. Trade Representative Robert Lighthizer and four other top Cabinet officials.

In the letter, sent on Wednesday and obtained by POLITICO Thursday, Joshua Bolten, Jay Timmons and Tom Donohue pushed back against common criticisms of the dispute settlement provision, which allows private companies to seek damages from government actions that violate their investment rights under a trade deal.

More than 100 business groups have already [written](#) to the administration to back the provision, and a lobbyist source told POLITICO earlier this week that the energy sector's support of a modernized NAFTA deal hinges directly on the inclusion of ISDS. Liberal lawmakers and progressive groups, meanwhile, are [threatening to oppose](#) any deal that includes the provision.

The three large business groups refuted the idea that ISDS infringes on U.S. sovereignty, writing "rather, it upholds the same fundamental due process and private property guarantees protected by our Constitution, and it obligates other countries to uphold these precepts as well."

They also praised the provision for providing "neutral arbitration" for decades — it has been a feature of nearly all U.S. trade agreements, including the original NAFTA. They also noted that the U.S. government has never lost an ISDS dispute.

The letter — which was also addressed to Commerce Secretary Wilbur Ross, Secretary of State Rex Tillerson, Treasury Secretary Steven Mnuchin and National Economic Council Director Gary Cohn — comes as the administration [is grappling](#) with its position over ISDS.

The USTR did not take a formal stance on the provision in its formal [negotiating objectives](#), released last month.

Adam Behsudi contributed to this report.

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Future of ISDS in NAFTA in doubt, giving companies pause [Back](#)

By Adam Behsudi | 02/22/2018 04:52 PM EDT

U.S. businesses are coming to the realization that the new NAFTA 2.0 deal may not include an investor-dispute process, which has allowed companies to recover hundreds of millions of dollars in damages over the 24-year life of the pact.

That possibility is growing more real amid new revelations that all three countries involved in the talks are considering an endgame in which the mechanism — known as the investor-state dispute settlement — is completely dropped from the revised deal. Possible options are expected to be discussed this week as negotiators meet Thursday through Saturday to discuss NAFTA's investment chapter.

During the latest round in Montreal, Canada presented a "conceptual proposal of possible landing zones," which included eliminating the ISDS from the pact's investment chapter, according to an official report seen by POLITICO that summarizes progress made on investment issues during the sixth round of talks in January. The dispute mechanism is contained in section B of Chapter 11 of the current pact.

"The chief negotiators instructed the leads to explore, on a without prejudice basis, a landing zone that would include no Section B," states the document. The document goes on to say that in exchange for dropping ISDS, Canada would be willing to offer flexibility when renegotiating the broader investment protections in the chapter.

"On a number of issues, the only way to get to yes is to drop them," said one source close to the talks. "At a technical level, there's no way to get this [resolved] in an early April time frame."

One potential result could end up with language that would allow companies that made investments before a certain date to retain access to ISDS mechanism. Another could be to include language similar to the U.S.-Australia trade agreement that didn't include ISDS but leaves open the possibility of negotiating a dispute settlement system in the future, said the source.

That could be a major problem for businesses and lawmakers who view ISDS as a vital part of any renegotiated deal.

"The United States, Canada, and Mexico should work together to retain ISDS provisions in NAFTA that ensure fair treatment of investors, and reject any efforts to undermine the positive role of these protections," the Business Roundtable said in a statement released Thursday. "Eliminating or weakening ISDS would be harmful to U.S. businesses and workers."

The American Petroleum Institute, the main lobbying organization for the U.S. oil and gas industry, released a statement this week stressing the importance of ISDS for U.S. access to Mexico's newly opened oil and natural gas market.

The BRT and two other major business groups — the U.S. Chamber of Commerce and National Association of Manufacturers — sent a warning in August that attempts to eliminate or weaken ISDS could undermine their support for a final deal.

"Without ISDS, would the business community support NAFTA?" said one trade lobbyist. "That's a question we're struggling with right now."

From the start of the negotiations in August, U.S. Trade Representative Robert Lighthizer has come out swinging against ISDS, proposing that U.S. participation in the process be voluntary. Ever since then, many business groups have pushed back against a move.

"ISDS does not infringe U.S. sovereignty. Rather, it upholds the same fundamental due process and private property guarantees protected by our Constitution, and it obligates other countries to uphold these precepts as well," the business groups wrote in an Aug. 23 [letter](#) to Lighthizer.

Three senior Republican senators warned Lighthizer as far back as August that Congress may not back a final NAFTA deal if it doesn't include strong dispute settlement provisions. The lawmakers argued that Trade Promotion Authority legislation passed in 2015 requires the administration to negotiate trade deals that include ISDS in exchange for getting any final trade deal fast-tracked through Congress with an up or down vote.

"In short, Congress has made clear that in order to win its support, a trade agreement must include effective state-to-state and investor-state dispute settlement provisions," Sens. [Orrin Hatch](#), [John Cornyn](#) and [John Thune](#) wrote in a [letter](#) to Lighthizer on Aug. 24, which was obtained this week by POLITICO.

One congressional aide reiterated this week that excluding ISDS from any new trade deal "would very seriously jeopardize obtaining congressional support."

After the third round of talks in September, Lighthizer said that the dispute mechanism gave companies an incentive to move production overseas, calling it "political risk insurance paid for by the United States government."

Canada, too, has no deep affection for the legal process that allows private companies to seek monetary compensation when they feel their investment rights under the pact's have been violated. Ottawa has lost a number of ISDS disputes brought by U.S. companies. In contrast, the United States remains undefeated against claims brought through NAFTA or any of its other trade deals.

Still, Canada is maintaining support for its initial proposal that would emulate an "investment court system" it set up through a trade deal with the European Union. That concept, which created a more transparent and permanent dispute process, was largely driven by Brussels as it attempted to respond to a groundswell of opposition to ISDS born out of its now defunct trade talks with the United States.

Canada's attachment to its own proposal may be lukewarm at best, according to sources close to the talks.

Ottawa's alternative, given the eagerness by Lighthizer to opt out of the proposal, would be a bilateral arrangement with Mexico using the same principles it established with the EU. But one source close to the talks said that option would take months of technical work.

A Canadian official pushed back against the suggestion that Canada's position is to ultimately drop ISDS from the pact.

"What we said there [in Montreal], and what we say now is that we want to improve ISDS or pursue a bilateral framework with Mexico," the official said.

Mexico, for its part, has been supportive of keeping ISDS in the agreement, albeit with some improvements.

Trade experts say a move by Canada to push forward the idea of dropping ISDS altogether could be part of a larger negotiating strategy to give the United States a win. That could, in turn, encourage Lighthizer to back off other, more contentious demands. A key priority for Canada is to defend the agreement's Chapter 19, which allows a country to challenge another's anti-dumping and countervailing duties.

"Canada basically views this as the last effort to move beyond this issue," said one trade lobbyist, who only had "slivers of hope" that a final deal would include ISDS.

Others saw the move as a miscalculation on Canada's part, which has spent much of the NAFTA talks going toe-to-toe with the United States.

"What do they think they're going to get out of this?" asked another trade lobbyist supportive of ISDS. "You think you're going to be able to hang on to Chapter 19? Forget about it."

Still, there is some sense among other practitioners that ISDS has run its course in trade agreements. U.S. companies could find ways to gain access to the legal process by investing through overseas subsidiaries in countries that still have the dispute mechanism in trade or investment treaties with either Canada or Mexico.

"The network of investment treaties has grown so big and complex, that it's not hard for an investor to structure an investment in a way that maximizes the potential protection from investment treaties," said an international arbitration lawyer.

"I think we certainly have hit the high watermark when it comes to ISDS," the lawyer added. "It's hard for me to see in the foreseeable future the United States negotiating an agreement that contains it."

Doug Palmer and Megan Cassella contributed to this report.

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Murray had early access to Perry to share coal plan [Back](#)

By Eric Wolff | 12/07/2017 04:22 PM EDT

Coal magnate Bob Murray pitched Energy Secretary Rick Perry on his plan to throw an economic lifeline to coal companies less than a month before Perry set in motion plans to aid the industry, according to newly disclosed photographs that show the two meeting.

The liberal magazine [In These Times](#) obtained [pictures](#) of Murray and Perry from a March 29 meeting at Energy Department headquarters, less than a month after Perry was [sworn in](#). Several other officials were in attendance, including Andrew Wheeler, who at the time was a lobbyist for Murray and has since been nominated as EPA's No. 2 official.

The meeting puts Murray and Perry together at a crucial moment in the timeline of the Trump administration's push to save the struggling coal industry, an effort that would [benefit Murray Energy](#) in particular while hiking electricity prices for potentially millions of people. A month before the meeting, one of Murray's biggest customers, FirstEnergy Corp., had told investors it was seriously considering sending its merchant division, FirstEnergy Solutions, into bankruptcy, a move which would likely void its supply contracts with Murray's coal mines.

Three weeks after Murray's visit, Perry would [order](#) a grid study that later became part of the justification for a proposed rule to reward coal and nuclear power plants for providing "grid resiliency." FERC, which has jurisdiction over the proposal, must make a decision on it by Monday.

At the time of the meeting, Wheeler was [already the leading candidate](#) to become the deputy administrator for EPA. Wheeler, who represented Murray as a lobbyist for Faegre Baker Daniels, would not be officially nominated for months. Wheeler, who [has acknowledged](#) participating in meetings on Murray's coal plan at DOE and on Capitol Hill, [cleared committee](#) last week and is awaiting Senate confirmation.

Murray is an outspoken supporter of President Donald Trump and held a fundraiser for him during the 2016 campaign.

DOE did not dispute the validity of the photos.

"Industry stakeholders visit the Department of Energy on a daily basis," DOE spokeswoman Shaylyn Hynes said, when asked about the meeting. "The DOE proposal to FERC was about the future and resiliency of the nation's power supply, an issue much bigger than one industry or company."

The photographs show Perry sitting at the head of a table in the Department of Energy, with Bob Murray, CEO of Murray Energy, to his left, and Wheeler down the table from Murray.

"Enclosed is an Action Plan for achieving reliable and low cost electricity ... and to assist in the survival of our Country's coal industry, which ... power grid reliability and low cost electricity," Murray writes in a cover letter to Perry, parts of which are visible in one photo from the meeting.

Though the document has never been publicly released, DOE critics say Murray's plan appears to have inspired DOE's grid study and the proposed rule Perry sent FERC in September. Copies are visible at the seats of most of the participants, including Perry and Murray. Wheeler, who told members of the Senate Environment Committee he had only seen the memo briefly, is not holding a copy in the photos obtained by In These Times. Murray told Greenwire in November he "didn't have any involvement" in writing the rule.

Murray has acknowledged sharing the plan with Trump.

"I gave Mr. Trump what I called an action plan very early," Murray said in a recent PBS Frontline documentary on EPA. "It's about three-and-a-half pages and — of what he needed to do in his administration. He's wiped out page one."

The meeting appears to have been successful for all. One of the photos shows Perry and Murray in a big bear hug.

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